

CITY OF LOS ANGELES
MRS. IDA P. CUFFE, PROTESTANT

IBLA 72-165

Decided May 16, 1972

Appeal from dismissal of protest and petition for modification of a right-of-way.

Rules of Practice: Generally

Where a party protested an issued right-of-way and requests cancellation thereof, asserting a violation of state law, and the matter is being litigated in the courts, the protest will not be entertained until a certified copy of the final judgment role is submitted to the land office.

APPEARANCES: J. D. Barnum, Esq., for the Protestant

ORDER

On October 12, 1971, the Department of Water & Power, City of Los Angeles, was issued a right-of-way by the Riverside office Bureau of Land Management, R. 4235, for a water diversion structure, subject to -

1. All valid rights existing on date of the grant,

* * *
4. Any diversion of water through the structure will be in accordance with State Water laws.

After the right-of-way was issued Mrs. Cuffe protested and requested that it be modified or canceled. She asserts that maintenance of the structure is violative of her established water rights and constitutes a trespass by the city.

On October 8, 1971, Mrs. Cuffe initiated a lawsuit in the Superior Court of California, Inyo County, Ida P. Cuffe v. City of Los Angeles et al., Civil No. 9045. She petitioned the court for trespass damages, to enjoin the maintenance of the water diversion structure and, in effect, for adjudication of her water rights vis-a-vis the city of Los Angeles. The ultimate determination of the lawsuit may be dispositive

of the issues before us, i. e., whether the right-of-way should be modified or canceled because of prior existing rights and whether the city, has complied with the state water laws. Mrs. Cuffe properly selected the state courts as the forum for the ultimate disposition of the private dispute between herself and the city, and the court has full authority to enforce its judgment or decree in that matter. It follows that consideration of her request for modification or cancellation must be suspended pending the final court decree; the protest will be considered by the Bureau of Land Management only after presentation by her of the final certified judgement role from the state court.

Therefore, pursuant to the authority, delegated to the Board of Land Appeals, (211 DM 13.5, 35 F. R. 12081), the case is returned to the Bureau.

Newton Frishberg, Chairman

We concur:

Joseph W. Goss, Member

Frederick Fishman, Member

